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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

**In re Marriage of ANUPAMA and  
SANJAY BHARDWAJ.**

**ANUPAMA BHARDWAJ,**

**A128171/A130338/A131205**

**Respondent,**

**(Alameda County  
Super. Ct. No. FF08380050)**

**v.**

**SANJAY BHARDWAJ,**

**Appellant.**

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This is a consolidated appeal in a dissolution action. Appellant Sanjay Bhardwaj contends the trial court committed numerous errors when dissolving his marriage to respondent Anupama Pathak. We conclude the court did not commit any prejudicial errors and will affirm.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Appellant and respondent married in 1990. Appellant worked in the computer industry and during the course of the marriage he also obtained a Masters of Business Administration (MBA) and a law degree. Respondent is a physician who at the time of trial worked as the Assistant Chief of Anesthesiology for Kaiser Permanente in Hayward

and Fremont. Appellant and respondent have two children, both boys, who were born in 1994 and 1997 respectively.

Appellant and respondent were successful financially and they amassed a substantial portfolio of assets that included the family home in Fremont, two other residences in Texas and Arizona, three vehicles, and numerous bank and retirement accounts.

In 2008, respondent filed a petition for dissolution. The court entered a status only judgment dissolving the marriage in October 2009. Reserved financial issues were then tried in two separate proceedings before two different judges.

The first trial, conducted on October 5, 6, and 7, 2009, before Judge Dan Grimmer, was focused on issues of child and spousal support. Appellant apparently lost his job shortly before trial and during the trial, he filed an income and expense declaration that stated his job ended October 5, 2009. But for tactical reasons, appellant chose not to highlight that fact during trial.<sup>1</sup> As a result, Judge Grimmer, respondent and her counsel, and appellant's own attorney all conducted the trial believing that appellant was still working and making more than \$12,000 per month.

Judge Grimmer took the case under submission but before he could issue his decision, appellant applied for a modification of support based on the fact that he was no longer working.

Judge Grimmer issued a lengthy statement of decision on February 10, 2010. After analyzing each of the factors set forth in Family Code section 4320<sup>2</sup> at length, Judge Grimmer ruled appellant was not entitled to permanent spousal support at that time. The Judge declined to consider how appellant's recent job loss might affect his right to permanent support ruling appellant's failure to bring that fact to the court's

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<sup>1</sup> As appellant explained during a later hearing, "I did not disclose the employment situation. [Judge Grimmer] took it as part of my strategy, which is my right. I want to impute my income at trial. That is my right, because at the end of it, I was hurting myself . . . ."

<sup>2</sup> Unless otherwise indicated, all further section references will be to the Family Code.

attention during the trial deprived the court of the information it needed to make an intelligent decision. As Judge Grimmer explained, “Notwithstanding that this fact was included in [appellant’s] Income and Expense Declaration, given that this circumstance was neither raised nor addressed at trial nor was it raised, addressed or argued in the parties’ (particularly [appellant’s]) written closing arguments on the Family Code § 4320 factors, the court has to draw the conclusion that this was part of [appellant’s] strategy to obfuscate ‘all’ of the relevant facts from the court to the [respondent’s] direct disadvantage. In a sense [appellant] ‘laid in wait’ for the last possible opportunity to bring up and argue this issue. In not bringing this to both the court’s and [respondent’s] ‘direct’ attention, [respondent] was not permitted to inquire into and the trier of fact was deprived of knowledge of the circumstances surrounding [appellant’s] loss of employment. For instance: Did he voluntarily quit? Was he terminated for cause? If so, what was the factual background for the company’s actions? Was he laid off as part of a company reorganization? If so, was he given a severance package? When did he learn of this job action? Has he found other employment. The responses to these basic inquiries and perhaps some others that the court has not thought of are all necessary for the court to exercise its equitable discretion and determine whether under this new circumstance [appellant] is entitled to any support.”

While Judge Grimmer declined at that time to decide how appellant’s job loss might affect his right to permanent spousal support, the judge stated he would retain jurisdiction over the issue and that appellant could “request an award of spousal support based upon the change of circumstance that he is no longer employed . . . .”

Finally, the court imposed \$1,500 in sanctions against appellant under section 2107, subdivision (c)<sup>3</sup> finding appellant had willfully understated his earnings.

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<sup>3</sup> As is relevant here, section 2107, subdivision (c) states: “If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, impose money sanctions against the noncomplying party.”

The statement of decision was not intended as a final decision. Judge Grimmer ordered respondent to prepare a formal order memorializing his ruling. For unexplained reasons, respondent never prepared such an order.

A second trial to address the remaining reserved financial issues (primarily the division of the parties' assets) was conducted on March 2, 3, 4, and 5, 2010, before Judge Stephen Pulido. At the beginning of the trial, the parties agreed that Judge Pulido would also hear appellant's request to modify Judge Grimmer's permanent spousal support ruling.

The parties presented their evidence and Judge Pulido took the matter under submission. While the parties were awaiting Judge Pulido's decision, on April 9, 2010, appellant filed a notice of appeal from Judge Grimmer's February 10, 2010 statement of decision. The appeal was assigned case number A128171.

Judge Pulido issued his statement of decision on July 2, 2010. As is relevant here, he ordered that the family residence in Fremont and the other houses in Texas and Arizona be sold and that the proceeds be divided. He also divided the parties' personal property and retirement and bank accounts and ordered that equalizing payments be made. The court granted appellant's request to modify permanent spousal support awarding him \$3,500 per month. Finally, the court imposed \$15,000 in sanctions against appellant under section 271<sup>4</sup> finding appellant's conduct during trial frustrated the policy of the law to promote settlement.

A single judgment that incorporated the rulings from both trials was entered on September 30, 2010. After the judgment was entered, appellant filed an "amended" notice of appeal stating that the notice he filed on April 9, 2010, also included the judgment entered on September 30, 2010. Then on November 15, 2010, appellant filed yet another notice of appeal from the September 30, 2010 judgment. The appeal was

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<sup>4</sup> Section 271, subdivision (a) states in part, "the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation . . . . An award of attorney's fees and costs pursuant to this section is in the nature of a sanction."

assigned case number A130338 and it was consolidated with the earlier appeal, case number A128171.

Meanwhile on October 8, 2010, appellant filed a motion for new trial alleging Judge Pulido had committed several errors. Respondent also filed a postjudgment motion arguing the judgment included a clerical error that should be corrected. The trial court addressed both motions at a hearing on December 16, 2010. On January 7, 2011, the court granted respondent's motion to correct a clerical error in the judgment but denied appellant's motion for a new trial. On February 9, 2011, appellant filed a third notice of appeal challenging the court's January 7, 2011 decision. The case was assigned number A131205 and it was consolidated with the prior two appeals.

## II. DISCUSSION

### A. General Principles

We begin by setting forth some fundamental principles of appellate practice.

(1) "A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]" (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.)

(2) An appellant's failure to register a proper and timely objection to a ruling or occurrence in the trial court will result in loss of the appellant's right to attack that ruling or occurrence on appeal. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184-185, fn. 1.)

(3) An appellant must support each argument he makes by citation to appropriate authority. If he fails to do so, the issue is forfeited for purposes of appeal. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.)

(4) "It is incumbent upon the parties to an appeal to cite the particular portion of the record supporting each assertion made. It should be apparent that a reviewing court has no duty to search through the record to find evidence in support of a party's position." (*Williams v. Williams* (1971) 14 Cal.App.3d 560, 565.)

(5) A party who contends that a particular finding is not supported by substantial evidence is obligated to set forth in his brief all the material evidence on the point and not

merely his own evidence. If this is not done, the error is deemed to be forfeited.

(*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)

(6) An appellant has the burden not only to show error, but prejudice from that error. If an appellant fails to satisfy that burden, his argument will be rejected on appeal. (*Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 963.)

(7) “[A] party must abide by the consequences of his own acts and cannot seek a reversal on appeal for errors which he has committed or invited. In other words, one whose conduct induces or invites the commission of error by the trial court is estopped afterward from taking advantage of such error.” (*Abbott v. Cavalli* (1931) 114 Cal.App. 379, 383.)

We next make a few observations about the briefs appellant has submitted. The California Rules of Court state that a brief that is produced on a computer must be no more than 14,000 words in length. (See Cal. Rules of Court, rule 8.204(c)(1).) Because this is a consolidated appeal from three separate rulings, we granted appellant permission to exceed that limit significantly ruling that he would be allowed to submit opening and supplemental opening briefs that together could total up to 23,000 words. Apparently even that was not enough. Appellant’s supplemental opening brief and reply brief adopt what can only be described as an unusual system of abbreviations. A few of the abbreviations, such as shortening the phrase “date of separation” to “DOS”, fair rental value to “FRV,” community property to “CP,” and separate property to “SP,” are not difficult to decipher. Many others are unusual such as abbreviating the concept of “miscarriage of justice” as “MCOJ” and “subject matter jurisdiction” as “SMJ.” Still others seem to be used for no reason other than to evade the word limitation that we imposed. For example, appellant abbreviates the three word phrase “the trial court” as “TCourt” and consistently shortens “the October trial” to “OctTrial.” And appellant repeatedly hyphenates improperly multiple words as well as adjectives and the nouns they precede to reduce his word count.

At oral argument, the court questioned appellant on whether he purposefully adopted these conventions in his briefing to reduce the total number of words, and

thereby willfully violated this court's briefing orders. Appellant freely admitted that he adopted this system of abbreviations in response to this court's orders limiting the length of his briefs. But appellant characterized his efforts not as an attempt to evade those orders, but an attempt to comply with them. According to appellant, he simply wanted to present as many arguments as he could; he considered it appropriate to do whatever was necessary to accomplish that result.

We conclude appellant did purposefully violate this court's briefing orders. His conduct is unacceptable. The orders of this court and the length limitations set forth in the rules of court are not simply suggestions to be evaded through artifice. They are rules that must be followed. Appellant, who is a licensed attorney, is strictly admonished: by his word reduction strategies he trifles with the court and impedes our review. We will expect and require appellant to comply fully with the rules of court and all court orders in all future filings.

B. Issues that Arise from the February 10, 2010 Statement of Decision

1. Procedural Issues

a. Whether the Statement of Decision is Appealable

Appellant filed a notice of appeal from Judge Grimmer's February 10, 2010 statement of decision. Respondent argues that appeal is not properly before this court because a statement of decision is not appealable. Respondent is correct in part. A statement of decision generally is not appealable. (*Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901.) While an exception to that rule exists if a statement of decision clearly represents the final ruling of the court, (*ibid.*) it did not become a final judgment here. Judge Grimmer ordered respondent to prepare a formal order memorializing his ruling, and respondent did not do so.

But this does not mean we lack jurisdiction to review the court's February 10, 2010 decision. As respondent concedes, the final judgment entered on September 30, 2010, included Judge Pulido's July 2, 2010 ruling *and* Judge Grimmer's earlier February 10, 2010 decision. Thus, Judge Grimmer's February 10, 2010 decision is in effect an interim ruling that we can review as part of the court's September 30, 2010 final

judgment. (See *In re Marriage of Nicholson & Sparks* (2002) 104 Cal.App.4th 289, 291, fn. 1.)

b. Whether the Trial Court Erred by Severing Permanent Support Issues

Appellant and respondent accumulated substantial assets during their marriage and appellant raised a large number of issues that had to be addressed during the divorce proceedings. Apparently, hoping to organize those many issues into a more manageable size, the court bifurcated the trial of the parties' financial issues. The first, conducted in October 2009, addressed the issues of child support and permanent spousal support. The second, in March 2010, primarily addressed how the parties would divide the assets they had accumulated.<sup>5</sup>

Appellant now contends the trial court "erred when it severed permanent-spousal support issues prior to division of assets and debts." This is clearly incorrect. The California Rules of Court expressly permit trial courts to "try separately one or more issues before trial of the other issues . . . ." (Cal. Rules of Court, rule 5.175(c).) Indeed, one court has gone so far as to state that in dissolution proceedings, bifurcation is "encouraged." (*In re Marriage of Wolfe* (1985) 173 Cal.App.3d 889, 894.) The trial court here reasonably concluded that given the number of issues the parties had raised, it was appropriate to consider them in two separate trials.

In arguing the trial court erred, appellant relies primarily on language taken from *In re Marriage of Burlini* (1983) 143 Cal.App.3d 65, where the court stated that the "purpose of permanent spousal support is not to preserve the preseparation status quo but to provide financial assistance, if appropriate, as determined by the financial circumstances of the parties *after their dissolution and the division of their community property*." (*Id.*, at p. 69, italics added.) Relying on the language we have italicized, appellant argues it was error for the court to determine permanent support before deciding how the community property was to be divided. We reject this argument because

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<sup>5</sup> As we have stated, the March 2010 trial also addressed appellant's request to modify permanent spousal support.

appellant has taken the language upon which he relies out of context. The *Burlini* court was not deciding whether it was proper to determine issues of permanent support before deciding related property issues. It was simply discussing the *nature* of permanent support and how it differs from temporary support. It is axiomatic that language in an opinion is not authority for propositions that are not considered. (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 127.)

c. Whether the Court Violated Appellant's Due Process Rights

One of the primary issues at the October trial was whether appellant was entitled to permanent spousal support. That issue is governed by section 4320 and case law holds that a court determining whether a party is entitled to permanent spousal support must evaluate each of the factors set forth in that section. (See, e.g., *In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 93.)

The trial court here followed that mandate precisely. Judge Grimmer prepared a lengthy statement of decision that listed the factors set forth in section 4320, discussed the evidence that was relevant to each, and then reached a conclusion stating how each factor affected whether appellant was entitled to permanent spousal support.

Appellant now challenges the statement of decision arguing Judge Grimmer violated his due process rights “when it made findings on marital home and MBA claims without notice and opportunity to be heard.”

This is incorrect. It is true the court discussed the marital home in Fremont and the fact that respondent had obtained an MBA during the marriage. But the court did so as part of its required analysis of the section 4320 factors. Specifically, in the course of discussing the “needs of each party based on the standard of living established during the marriage” (§ 4320, subd. (d)), the court discussed how much it cost to maintain the family home in Fremont. Similarly, in the context of analyzing the “extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party” (§ 4320, subd. (b)), the court discussed the fact that respondent had obtained an MBA during the marriage. Appellant not only had notice that

the court would be evaluating the section 4320 factors, he briefed those factors extensively. The court did not violate appellant's due process rights.

d. Whether the Court Erred When it Declined to Consider Appellant's Arguments

At the conclusion of the October trial, Judge Grimmer asked the parties to submit written final arguments on the section 4320 factors and on the issue of sanctions. To prevent the parties from getting "carried away" the judge imposed a strict page limit and ordered that each page have no more than 26 lines to the page with a 12-point font. Appellant was granted permission to file a three-page reply brief.

The written reply appellant submitted violated the court's order. It is seven pages long, is in a size 8 font, and contains 32 lines to the page. Noting these violations, Judge Grimmer sanctioned appellant by refusing to consider his reply arguments.

Appellant now contends Judge Grimmer erred when he failed to consider the reply arguments he submitted.

"Every court has the inherent power, in furtherance of justice, to regulate the proceedings of a trial before it; to effect an orderly disposition of the issues presented; and to control the conduct of all persons in any manner connected therewith. [Citations.] The exercise of this power is a matter vested in the sound legal discretion of the trial court, subject to reversal on appeal only in those instances where there has been an abuse of that discretion.'" (*Schimmel v. Levin* (2011) 195 Cal.App.4th 81, 87, quoting *People v. Miller* (1960) 185 Cal.App.2d 59, 77.)

We find no abuse here. The trial court asked for written final arguments and imposed an entirely reasonable limitation on their length. Appellant then violated those restrictions. The court acted well within its discretion when it declined to consider arguments that violated its order.

2. Substantive Issues

Appellant raises what he describes as a series of "substantive" challenges to Judge Grimmer's February 10, 2010 statement of decision. Before we turn to those arguments, we note a critical and overarching point. As we have stated, Judge Grimmer's February 10, 2010 statement of decision that declined to award appellant permanent spousal was

never reduced to a final order or judgment. And when that statement of decision was included in a final judgment in July 2010, the court did not make a zero award. Rather, the court awarded appellant \$3,500 per month in support, an amount appellant himself testified was adequate. Thus, it is difficult to see how appellant could have been prejudiced by the nonfinal statement of decision that when incorporated into a final judgment was changed to an amount that appellant testified was adequate.

With this background, we turn to the specific arguments advanced.

a. Sufficiency of the Evidence

Judge Grimmer's section 4320 analysis is premised on the assumption that appellant was employed at Cisco-Systems. Appellant now attacks this assumption arguing it is not supported by substantial evidence.

Judge Grimmer did evaluate the section 4320 factor as though appellant was employed. But as we have explained, this was because appellant led everyone to believe that he was employed. Thus, Judge Grimmer's analysis is supported by the substantial evidence that appellant himself presented.

Furthermore even if we were to assume, *arguendo*, that there was some error, we would not reverse. The doctrine of invited error holds that where a party, by his conduct had induced the commission of error, he is precluded from asserting that error as a ground for reversal on appeal. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 403.) That is precisely what happened here. The record indicates the court did not consider appellant's recent job loss because appellant did not raise that issue adequately at the October trial. Indeed, according to Judge Grimmer, appellant concealed that point only springing it at the last possible moment. We conclude appellant is precluded from arguing the court erred based on an alleged error he induced.

b. Analysis of Section 4320 Factors

Appellant contends Judge Grimmer "engaged in wholesale disregard of [his] testimony on [the] record when it found [he was] self-supporting, not in need of any support, and that any support would be a bonus to him." In a closely related argument, appellant contends the "trial court did not consider favoring factors adequately." We

reject both these arguments on procedural grounds. Appellant premises his arguments on a view of the record that is most favorable to him. This is precisely the opposite of what is required on appeal. (*In re Marriage of Arceneaux, supra*, 51 Cal.3d at p. 1133.) Furthermore, appellant advances his arguments by only citing evidence that is favorable to him. A party who contends that a particular finding is not supported is obligated to set forth all the material evidence on the point and not merely his own. If this is not done, the error is deemed to be forfeited. (*Foreman & Clark Corp. v. Fallon, supra*, 3 Cal.3d at p. 881.)

Appellant's next argument is based on a portion of the February 10, 2010 statement of decision where Judge Grimmer stated the income and expense declarations the parties submitted showed they had no credit card debt. Appellant contends this finding is not supported because the income and expense declaration he submitted shows he did in fact have some credit card debt.

Appellant is correct to a point. The income and expense declaration appellant submitted during trial includes a section where a party is asked to list all debts and appellant *did not* list any credit card debt. But another section of the declaration asks a party to explain how he or she paid his or her attorney fees and there appellant listed "credit card debt" among other sources. Thus, while the income and expense declaration appellant submitted is confusing, it does disclose that he at least claimed to have some credit card debt. But we fail to see how appellant was prejudiced. As we have noted, Judge Grimmer's February 10, 2010 statement of decision was never reduced to a final order, and when that ruling was included in a final judgment, the court awarded appellant permanent spousal support in an amount appellant testified was adequate. We conclude appellant was not prejudiced by a misstatement in a nonfinal statement of decision that was subsequently superseded.

Next appellant argues the trial court "improperly justified [the] no support finding on disfavoring factors." Appellant's argument on this point is difficult to follow, but as we understand it, appellant disagrees with how the trial court evaluated some of the section 4320 factors. Specifically, appellant complains the court improperly assumed he

had the ability to earn significant income because he had a law degree, but failed to consider that he had not yet obtained a legal job. This is wrong. The court knew appellant had not obtained a legal position. It noted appellant had “aspirations to practice as a patent attorney” but that as of trial, “all such positions are frozen.”

Appellant’s next argument is based on a portion of the statement of decision where the court stated: “It appears to the court that the sole basis for [appellant’s] original request for current support is that [respondent] makes more money than he does and therefore he is entitled to support . . .” Appellant argues this comment shows the court erred because income disparity is a factor a court must consider when deciding whether to award spousal support. While the parties’ earning capacity is a factor the court must consider (§ 4320, subd. (a)), it is only one factor. A court determining whether to award support must evaluate all the section 4320 factors (*In re Marriage of Kerr, supra*, 77 Cal.App.4th at p. 93), and that is precisely what the court did here. The isolated comment upon which appellant relies does not indicate the court erred.

Appellant’s next argument is based on a portion of the statement of decision where the court noted that appellant and respondent would each receive approximately \$900,000 after their property was divided. Appellant complains this was error because “[c]ase law is replete with facts where a division of substantial assets occurred along with an award of spousal-support.” That undoubtedly is true, but the judge was required to evaluate “[t]he obligations and assets, including the separate property, of each party” when determining support (§ 4320, subd. (e)), and that is what the court was doing in the quote appellant has identified. There was no error.

Next appellant contends trial court “fail[ed] to articulate [the] reasonable needs of the supported-spouse.” This is simply wrong. The court specifically analyzed the “needs of each party based on the standard of living established during the marriage.”<sup>6</sup> (§ 4320, subd. (d).) The court did not err on this ground.

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<sup>6</sup> As the court explained, “From the evidence presented, at the time of separation, the parties lived an upper middle class lifestyle with a residence, real estate investments, automobiles, other personal property, [and] day to day and annual activities consistent

Next, appellant contends the trial court “fail[ed] to exercise discretion ‘along legal lines.’” As we understand this argument, appellant maintains the trial court failed to evaluate the section 4320 factors fully. But as we have explained the court did evaluate the section 4320 factors fully and completely. There was no error on this ground.

Finally, as to all the arguments appellant makes in this section, we add an important caveat. Even if we were to assume, *arguendo*, that some point appellant made was meritorious we would not reverse. As we have stated, Judge Grimmer’s decision was never reduced to a final order or judgment, and when it was incorporated into a final judgment in July 2010, the court did not make a zero award. Under these circumstances, any possible error was harmless. (*Century Surety Co. v. Polisso, supra*, 139 Cal.App.4th at p. 963.)

c. Housing Issues

The trial court was required to and did in fact evaluate the “needs of each party based on the standard of living established during the marriage.” (§ 4320, subd. (d).) As is relevant here, and as we have noted, the court stated that appellant and respondent lived an upper-middle class lifestyle during their marriage, a standard of living that they probably could maintain “but for their significant housing expense at the time of separation . . . .” Analyzing this factor the court stated: “[Appellant] is currently living in the family home at the expense of approximately \$7,000 per month. [Respondent] is renting a residence at this time. While such a monthly housing expense may have been

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with that. As an example they were able to travel back to India on a regular basis as well as to take some extended vacations both domestically and abroad. Their residential neighborhood and the children’s school were also reflective of this level of a style of living. Both parties seem capable of maintaining this with possibly one exception. [Appellant] is currently living in the family home at the expense of approximately \$7,000 per month. [Respondent] is renting a residence at this time. While such a monthly housing expense may have been reasonable at the time when the parties’ joint monthly income was in excess of \$35,000 . . . it is not a part of their marital standard that either would be expected to maintain. The court finds therefore that, but for their significant housing expense at the time of separation, both parties[ ] are currently capable of maintaining the marital standard of living.”

reasonable at the time when the parties' joint monthly income was in excess of \$35,000 . . . it is not a part of their marital standard that either would be expected to maintain."

Appellant now makes two arguments based on these comments. First, appellant contends the trial court erred when it focused on the fact that he was living in the family home at an expense of \$7,000 per month. This was error, appellant contends, because the court "read a housing exception to [the] station in life and marital living standard." Appellant misinterprets the record. The court did nothing more than acknowledge the unremarkable fact that a level of income that would allow a family living in a single home to live an upper-middle class lifestyle might not be sufficient after the parties divorce and establish separate residences. The court did not improperly apply any sort of housing exception.

Appellant's second argument focuses on the court's statement that "While such a monthly housing expense may have been reasonable at the time when the parties' joint monthly income was in excess of \$35,000 . . . *it is not a part of their marital standard that either would be expected to maintain.*" (Italics added.) Focusing on the language we have italicized, appellant contends the court erred because he was entitled to maintain the same standard of living after his divorce. That may be the goal, but it is not always possible. Case law has long recognized that separation is usually accompanied by a decrease in the standard of living enjoyed by both spouses, due to the additional expenses incurred by the party who leaves the family home. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 482.) The court here did not err simply because it recognized the unremarkable fact that two residence cost more to maintain than one.

#### d. Marital Standard of Living

Appellant contends the trial court committed several errors when evaluating the marital standard of living.

First, appellant contends the court erred when it cited *In re Marriage of Ostler & Smith* (1990) 223 Cal.App.3d 33, 48, for the proposition that marital standard of living is a factor that the court must weigh when determining whether to award spousal support.

That is the holding of that case. (*Ibid.*) It is also the law. (See § 4320, subd. (a).) The court did nothing wrong when it followed that holding.

Next, appellant conducts what he describes as three different quantitative analyses of the of the marital standard of living. Appellant contends that no matter which of those analyses is used, the amount the court awarded in spousal support is wrong. We reject this argument because it misapprehends our function on appeal. This court does not determine, de novo whether appellant was entitled to spousal support. Rather, the trial court is granted the discretion to determine whether spousal support is appropriate and it's ruling will be affirmed on appeal so long as the court did not abuse its discretion. (*In re Marriage of Meegan* (1992) 11 Cal.App.4th 156, 161.) The analyses appellant sets forth do not, ipso facto, demonstrate the court abused its discretion.

Finally, on this point, appellant complains the court erred when it stated it was using the marital standard of living as “only a reference point” when determining support. Appellant reads too much into the court's comment. The marital standard of living is one of the factors a court must evaluate when determining support. (*In re Marriage of Ostler & Smith, supra*, 223 Cal.App.3d at p. 48.) The court did nothing wrong.

e. Whether the Court Engaged in Improper Speculation

Appellant contends the trial court erred when it engaged in speculation about the section 4320 factors.

Appellant relies first on cases that hold a court should not terminate jurisdiction unless the record clearly indicates the supported spouse will be able to meet his or her financial needs. (See, e.g., *In re Marriage of Richmond* (1980) 105 Cal.App.3d 352, 356.) But the court's February 10, 2010 statement of decision did not terminate jurisdiction to award permanent spousal support. The court specifically retained jurisdiction and granted appellant the right to request a modification based on the changed circumstance that he had lost his job. Appellant's argument on this point is based on a false premise.

Next, appellant contends the trial court erred because it based its spousal support decision on the amount he might earn in the future. Appellant has not cited the place in the record where this error allegedly occurred. He has forfeited the right to raise the argument on appeal. (*Williams v. Williams, supra*, 14 Cal.App.3d at p. 565.)

f. Respondent's Work Reduction

As we have stated, respondent is a practicing anesthesiologist who works for the Kaiser Permanente Medical Group. Respondent earned a gross income of \$341,000 in 2007 but she suffered a work-related injury and at the time of trial she was working only 60 percent of the time and was earning approximately \$21,000 per month.

Appellant argued respondent's condition was not serious and he asked the court to impute a higher salary to her.

Respondent presented a wide array of evidence to refute that allegation. Respondent testified that she had been experiencing pain since 2004. She was evaluated by a neurosurgeon who advised her to decrease her workload.

Respondent's treating physician, Dr. Alan Hsu, testified that respondent was suffering from cervical and trapezius strains. His evaluation was supported by X-rays and other objective criteria. Dr. Hsu recommended that respondent work no more than three days per week a restriction he expected to remain in place for the remainder of her life.

Judge Grimmer credited this testimony in his statement of decision. Citing Dr. Hsu's testimony and the objective criteria that supported his decision, the Judge rejected appellant's allegation, ruling appellant "failed to meet his burden as there is insufficient evidence to impute additional income to [respondent] . . ."

Appellant now challenges Judge Grimmer's ruling on several grounds. First, he argues the judge misallocated the burden of proof. That is incorrect. A spouse who seeks to impute income to another spouse must first introduce competent evidence that demonstrates the other spouse has both the ability and the opportunity to earn the income sought to be imputed. (*In re Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1329.) Here, the evidence before the court showed respondent could only work a 60 percent

schedule and that she would be subject to that restriction for the remainder of her life. Indeed other evidence indicated it would be difficult for respondent to increase her hours even if she wanted to, because of restrictions put in place by Kaiser's hospital board. Based on this evidence, the trial court reasonably could conclude appellant failed to carry his burden to show that appellant had the ability to earn the income he sought to impute. (*Ibid.*)

Appellant next argues that whether income should be imputed is an issue of law that his court must determine de novo on appeal. Neither of the cases appellant cites, *In re Marriage of Regnery* (1989) 214 Cal.App.3d 1367, 1373-1374 or *In re Marriage of Padilla* (1995) 38 Cal.App.4th 1212, 1220, support that conclusion. In fact, case law holds that a court's decision about whether to impute income is reviewed for abuse of discretion. (*In re Marriage of Berger* (2009) 170 Cal.App.4th 1070, 1079.)

Finally, appellant contends the trial court should have imputed income to respondent based on testimony from Dr. Hsu that respondent was considered 5 percent disabled for purposes of the workers' compensation law. We note first that Dr. Hsu also testified that a 5 percent disability impairment rating does not correspond to any particular work restrictions. Furthermore and more to the point, appellant has not cited any authority that holds a given disability rating for workers' compensation purposes is controlling for purposes of imputing income to spouse. Indeed, appellant has not cited *any* authority to support his position on this point. We conclude appellant has forfeited the right to raise the argument on appeal. (*Badie v. Bank of America, supra*, 67 Cal.App.4th at pp. 784-785.)

### C. Issues that Arise From the September 30, 2010 Judgment

Appellant attacks the September 30, 2010 judgment and Judge Pulido's underlying July 2, 2010 statement of decision on procedural and substantive grounds. We turn to the procedural issues first.

## 1. Procedural Issues

### a. Subject Matter Jurisdiction

As we have noted, Judge Pulido's July 2, 2010 statement of decision and the associated September 30, 2010 judgment imposed \$15,000 in sanctions against appellant under section 271. Appellant now contends Judge Pulido lacked "subject matter jurisdiction" to impose the sanctions because they were based at least in part on appellant's conduct during the October 2009 trial, a proceeding over which Judge Pulido did not preside.

Judge Pulido did mention the October 2009 trial when explaining his sanctions ruling. But the judge was quite clear appellant's conduct during the October 2009 trial played no part in his decision to award sanctions. As he explained, "It is true that the sanctions somewhat emanated from the fact that Judge Grimmer was not aware of your unemployment situation, but my sanctions were as a result of what happened since the October trial, the fact that we had to have a whole spousal support modification trial based upon the fact that you did not clearly indicate to Judge Grimmer that you were unemployed. . . . But my sanctions were what happened in this court, that numerous hours were spent, since you saw Judge Grimmer, in a modification of spousal support trial and all that goes into that in preparing. That was the primary – not the only – but the primary basis for the sanctions. It wasn't going back, redoing what happened in October. It was dealing with what happened since October. . . ."

Appellant relies on other portions of the record that he interprets to mean that the October trial played some part in Judge Pulido's sanctions order. But on appeal we are obligated to view the record in the light that is most favorable to the lower court's ruling. (*In re Marriage of Arceneaux*, *supra*, 51 Cal.3d at p. 1133.) We conclude the court did not err on this ground.

Appellant also contends the trial court lacked subject matter jurisdiction because the spousal support award in the July 2010 statement of decision was based on a different level of income than was assumed in the February 2010 statement of decision. Whereas Judge Grimmer based his February 2010 ruling on the fact that appellant's monthly

income was \$12,630 month, Judge Pulido's July 2010 statement of decision was based on the fact that appellant was earning \$13,751 per month. Appellant contends Judge Pulido lacked subject matter jurisdiction to make a different ruling because no party had made a motion to change his level of income. But one of the major purposes of the second trial was to determine the spousal support to which appellant was entitled, and one of the issues a court must evaluate when determining spousal support is the supported spouse's earning capacity. (§ 4320, subd. (a).) Therefore, the court not only had jurisdiction to evaluate appellant's then current level of income, it was required to do so. (*In re Marriage of Kerr, supra*, 77 Cal.App.4th at p. 93.) The court did not err.<sup>7</sup>

b. Whether the Court Erred by Considering Matters from the October Trial

Appellant contends that Judge Pulido erred because he considered events that occurred in the October trial when making his ruling. According to appellant, this was akin to the court conducting an out-of-court experiment and constituted judicial misconduct. This is simply wrong. Judge Pulido did not conduct an out-of-court experiment nor did he commit misconduct. He simply framed his ruling based on the prior rulings that had been made in the same case. Appellant has cited no authority that indicates this is improper and we are aware of none.

Alternately, appellant contends that Judge Pulido erred by communicating with Judge Grimmer on an *ex parte* basis. Appellant bases his argument on a statement Judge Pulido made during the second trial. As is relevant here, Judge Pulido stated: "You had a big trial on spousal support, and the day before that trial begins, your client indicates he lost his job. *But yet Judge Grimmer is telling me that it never came up*, never discussed, never testimony, but that it didn't come up until your client filed some objections to a tentative proposal. So that's disturbing to me . . . ." (Italics added.) Appellant interprets the passage we have italicized to mean that Judge Pulido contacted Judge Grimmer on an *ex parte* basis and had a conversation with him about the October trial. We are

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<sup>7</sup> Having reached these conclusions, we need not determine whether either of the errors appellant alleged were prejudicial.

unpersuaded. Judge Pulido's comment about what Judge Grimmer told him clearly refers to the comments Judge Grimmer made in his February 10, 2010 statement of decision, not to any sort of *ex parte* oral communication. Indeed, we are required on appeal to presume the court did not commit the error appellant suggests. (*In re Marriage of Arceneaux, supra*, 51 Cal.3d at p. 1133.) There was no error on this ground.

c. Whether the Court Considered Improper Testimony

Appellant testified at the March 2010 trial that he told the court during an October 2009 trial that he recently had been paid a bonus of \$14,657. When respondent's counsel indicated he would impeach appellant on that point, appellant's counsel objected on relevance grounds. The court overruled the objection. Defense counsel then read passages from the October 2009 trial in which appellant denied receiving any bonus.

Appellant now contends the trial court erred because the evidence about his prior testimony was not relevant. We disagree. One of the factors a court may consider at trial is the credibility of witnesses, and one matter that demonstrates credibility is "[a] statement made by [the witness] that is inconsistent with any part of his testimony at the hearing." (Evid. Code, § 780, subd. (h).) Plainly, the fact that appellant was lying at the March 2010 trial was relevant.

Appellant also argues the court should not have considered his testimony at the 2009 trial because doing so violated Code of Civil Procedure section 2051. Appellant did not assert this argument in the court below. He has forfeited the right to raise it on appeal. (Evid. Code, § 353; see also *Doers v. Golden Gate Bridge etc. Dist., supra*, 23 Cal.3d at pp. 184-185, fn. 1.) Furthermore, the code section upon which appellant relies does not exist.

d. Whether the Sanction Award Violated Due Process

As we have stated, the court imposed sanctions against appellant in the September 2010 judgment ordering him to pay \$15,000 under section 271. Appellant now contends the trial court violated his due process rights because he had no notice that he might be sanctioned under that section.

Due process requires that a party be given notice and an opportunity to be heard before sanctions under section 271 are imposed. (*In re Marriage of Petropoulos* (2001) 91 Cal.App.4th 161, 178.) The record here indicates appellant was provided with both. Appellant plainly was on notice that he might be sanctioned under section 271. On the very first day of trial, respondent's counsel raised the issue of sanctions under section 271 stating that, "both parties are asking the Court, at the conclusion of this trial, to essentially say it was somewhat unreasonable in forcing this trial to happen." Respondent's counsel then raised the issue again during final argument repeatedly asking the court to sanction appellant under section 271. Appellant also had the opportunity to be heard. Appellant's counsel addressed the issue during his final argument telling the court that sanctions were not warranted. Then at the close of trial, the court asked both parties to submit detailed attorney fee declarations so it could determine whether an award of sanctions was proper. Appellant was plainly on notice that the court might impose sanctions against him under section 271 and he had ample opportunity to be heard.

Appellant also contends he was not provided with adequate notice because he was never told how much in sanctions respondent was seeking. But the attorney fee declaration respondent's counsel submitted in response to Judge Pulido's request indicates respondent incurred attorney fees far in excess of \$15,000 that were ultimately imposed. Appellant had adequate notice.

## 2. Substantive Issues

### a. Whether the Court was Required to Analyze All of the Section 4320 Factors

Appellant contends Judge Pulido erred because he did not conduct a de novo analysis of *all* the section 4320 factors when determining how much permanent spousal support was appropriate. We reject this argument. Appellant's counsel *agreed* the court did not have to evaluate all of the section 4320 factors because the only thing that had changed was that appellant was not working. Appellant cannot claim as error a procedure to which he agreed. (*Abbott v. Cavalli, supra*, 114 Cal.App. at p. 383.)

b. Whether the Court Ignored Appellant's Needs

Appellant contends Judge Pulido erred because he ignored appellant's needs when calculating the amount of permanent spousal support. Appellant's argument on this point is difficult to follow, but we need not try to sort it out. Judge Pulido awarded appellant \$3,500 per month in permanent spousal support, an amount appellant himself testified was adequate. We conclude appellant was not prejudiced by the error he alleges.

c. Support Calculation

The trial court determined that appellant had custody of his children 28 percent of the time and it used that figure to calculate appellant's child support obligation. Appellant now asks this court to independently determine the amount of time he has custody of his children. Appellant misunderstands our function on appeal. The essential distinction between trial and appellate courts is that trial courts decide questions of fact and appellate courts decide questions of law. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.) Only in the most rare of circumstances does an appellate court make independent findings of fact. (*Ibid.*)

Here, the trial court made a factual finding on the amount of time appellant had custody of his children. We decline appellant's request to make a different finding based on our own independent review of the record.

The primary case upon which appellant relies, *In re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 826, does not change our conclusion. The court in *Rosen* did calculate the parties' custody arrangement independently, but the court cited no authority that indicated it was required to do so. Indeed, the *Rosen* court did not discuss whether an appellate court is required to make independent findings of fact. Cases are not authority for propositions that are not considered. (*Silverbrand v. County of Los Angeles, supra*, 46 Cal.4th at p. 127.)

d. Whether the Court Erred when it Ruled the Parties Must Sell the Family Home

Appellant asked the court to defer the sale of the family home so that he could purchase respondent's interest at some later date. The trial court denied that request

finding a deferred sale was not economically feasible. Appellant now contends the trial court erred because it did not evaluate his request adequately.

The procedure a court must follow when deciding whether to order a deferred sale of the family home is set forth in sections 3800 through 3810. Section 3801, subdivision (a) states that if one of the parties has requested a deferred sale, “the court shall first determine whether it is economically feasible to maintain the payments of any note secured by a deed of trust, property taxes, insurance for the home during the period the sale of the home is deferred, and the condition of the home comparable to that at the time of trial.”

Section 3802, subdivision (a) states: “If the court determines pursuant to Section 3801 that it is economically feasible to consider ordering a deferred sale of the family home, the court may grant a deferred sale . . . .” Section 3802, subdivision (b) then lists 10 factors a court must consider when exercising its discretion.

Appellant contends the trial court here erred because it did not evaluate the 10 factors set forth in section 3802, subdivision (b). But the court was only required to evaluate the section 3802, subdivision (b) factors “If [it] determine[d] pursuant to Section 3801 that it [was] economically feasible to consider ordering a deferred sale . . . .” (§ 3802, subd. (a).) Because the court did not make the required threshold finding under section 3801, subdivision (a), the court was not required to evaluate the factors set forth in section 3802, subdivision (b).

Appellant also contends the trial court erred because it was possible to divide the parties’ assets in such a way that he could retain the family home. According to appellant, the court’s failure to do so resulted in a “manifest miscarriage of justice.” But the trial court is granted broad discretion to determine the manner in which the parties’ assets are divided. (*In re Marriage of Cream* (1993) 13 Cal.App.4th 81, 88.) We cannot conclude the trial court abused its discretion simply because some other method of division might have been possible.

e. Reimbursement for Use of the Family Home

Appellant lived in the family home after the parties separated and the trial court ordered him to reimburse the community \$5,200 per month for the value of that use. Appellant now contends the trial court erred because respondent did not file a pleading that specifically asked that she be reimbursed in that amount: i.e., \$5,200 per month. Appellant has not cited any authority that holds respondent was obligated to file such a pleading and the case he does cite, *Guadalupe A. v. Superior Court* (1991) 234 Cal.App.3d 100 does not so hold. Indeed, case law has long held that a trial court has the discretion to order a spouse who has exclusive use of the family home to reimburse the community for the value of that use. (*In re Marriage of Watts* (1985) 171 Cal.App.3d 366, 373-374.)

In a related argument, appellant contends the trial court abused its discretion when it ordered him to reimburse the community for his use of the family home. Appellant advances this argument by only citing evidence that is favorable to him. On appeal we are obligated to view the record in the light most favorable to the lower court's ruling. (*Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 765.) The record here, viewed in the appropriate light, convinces us the court did not abuse its discretion when it ordered appellant to reimburse the community for his use of the family home.

f. Bank of America Accounts

Appellant contends the trial court made several errors deciding how accounts held by the Bank of America should be divided.

First, appellant contends the court erred because the disclosure documents respondent submitted prior to trial demonstrate she was hiding money from him. Appellant's argument on this point is difficult to follow (made especially so by his improper use of hyphens and abbreviations) but he appears to be asking this court to make an independent finding that respondent committed perjury. As we have explained, we do not make findings of fact, we decide issue of law. (*In re Zeth S., supra*, 31 Cal.4th at p. 405.) We decline appellant's apparent request to make an independent factual finding that respondent lied.

Next, appellant argues the court improperly allocated the burden of proof for community accounts and community expenses. Appellant mischaracterizes the record on this point. Appellant alleged respondent committed fraud with respect to certain bank accounts that she controlled. Respondent retained a forensic accountant who evaluated the accounts. He testified at trial that he saw nothing suspicious. The trial court credited the accountant's testimony and ruled that appellant failed to prove that respondent committed fraud. Thus, the court did not allocate the burden of proof improperly. It simply rejected appellant's allegation that respondent committed fraud. There was no error on this ground.

Appellant's final argument on this point is that the "TCourt failed to apply [the] proper standard for breach of fiduciary-duty." Appellant has not cited the place in the record where this error allegedly occurred. Appellant has forfeited the right to raise the argument on appeal. (*Williams v. Williams, supra*, 14 Cal.App.3d at p. 565.)

g. Division of Community Property

Appellant contends the trial court erred by dividing the community property unequally. His argument on this point is based on four assets: (1) a \$9,000 education account; (2) the allocation of tax liability for the 2008 tax year; (3) community furniture; and (4) Kaiser stock. We reject appellant's arguments with respect to items 1, 2, and 4 because appellant has not cited the portion of the record where these errors allegedly occurred. He has forfeited the right to raise the arguments on appeal. (*Williams v. Williams, supra*, 14 Cal.App.3d at p. 565.) With respect to item 3, appellant has not cited any authority to support his position. He has forfeited the right to raise the argument on appeal. (*Badie v. Bank of America, supra*, 67 Cal.App.4th at pp. 784-785.)

h. Section 2641 Reimbursement

Respondent obtained an MBA degree during her marriage and appellant asked the court to order her to reimburse the community for the sums expended to obtain that degree. The trial court denied appellant's request finding appellant failed to meet his burden of establishing that respondent's MBA substantially increased her earning capacity. Appellant now contends the trial court erred when it denied reimbursement.

Section 2641, subdivision (b)(1) states in part: “The community shall be reimbursed for community contributions to education or training of a party that substantially enhances the earning capacity of the party.”

Section 2641, subdivision (c) then goes on to state: “The reimbursement . . . required by this section shall be reduced or modified to the extent circumstances render such a disposition unjust, including, but not limited to, any of the following: [¶] (1) The community has substantially benefited from the education, training, or loan incurred for the education or training of the party. *There is a rebuttable presumption, affecting the burden of proof, that the community has not substantially benefited from community contributions to the education or training made less than 10 years before the commencement of the proceeding . . .*” (Italics added.)

Now relying on the portion of section 2641, subdivision (c)(1), that we have italicized, appellant argues the trial court erred when it placed the burden on him to prove respondent’s MBA substantially increased her earning capacity.

Appellant has misinterpreted the statute upon which he relies. Section 2641 subdivision (b)(1) states the general rule that the community must be reimbursed for community contributions toward the education or training of a party that “substantially enhances the earning capacity” of that party. Section 2641, subdivision (c), then sets forth exceptions to the general rule including where the community has “substantially benefited” from the education or training of the party. Here, the court found appellant failed to meet his burden to prove that respondent’s MBA substantially increased her earning capacity. Therefore, the court had no occasion to determine whether any of the exceptions to reimbursement set forth in section 2641, subdivision (c) might exist.

i. Section 2640 reimbursement

Appellant contends the trial court erred when it declined to reimburse him for separate property contributions he made toward the purchase of the Texas property. Appellant notes he testified that he intended to invest his separate property into that asset and seems to contend that under *In re Marriage of Mix* (1975) 14 Cal.3d 604, the court was required to accept his uncontradicted testimony. This is wrong. In *Mix*, the wife

testified she purchased certain assets using separate property and the trial court accepted her testimony. The *Mix* court affirmed that ruling on appeal: “The trial court evidently believed Esther. . . . Viewing this evidence in the light most favorable to Esther, giving her the benefit of every reasonable inference, and resolving all conflicts in her favor, as we must under the rules of appellate review [citations], we conclude that there is substantial evidence to support the trial court’s finding that Esther traced and identified the source and funds of her separate property.” (*Id.* at p. 614.)

Thus, *Mix* stands for the proposition that the trial court’s rulings must be supported by substantial evidence. It does not mean a court must accept the uncontradicted testimony of a party.

j. Attorney Fees

Appellant contends the trial court erred when it declined to award him attorney fees. The trial court is granted broad discretion to determine how attorney fees and costs should be allocated in a dissolution and its ruling will be reversed on appeal only where the court abused its discretion. (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 406.) We find no abuse here. The evidence before the court showed appellant and respondent were both highly educated, that both had a history of receiving substantial salaries, and that both would receive substantial assets once their property was divided. On this record, we cannot conclude the trial court abused its discretion when it declined to award appellant attorney fees.

D. Issues that Arise from the January 7, 2011 order

As we have stated, a single judgment that incorporated the rulings from Judge Grimmer’s October 2009 trial and Judge Pulido’s March 2010 trial was entered on September 30, 2010.

On October 21, 2010, respondent filed a motion to correct a clerical error in that judgment. The error concerned what are commonly called *Watts* charges and *Epstein* credits. Under *In re Marriage of Watts, supra*, 171 Cal.App.3d at pages 373-374, the trial court has the discretion to order a spouse who has exclusive use of the family home after separation to reimburse the community for the value of that use. Under *In re Marriage of*

*Epstein* (1979) 24 Cal.3d 76, 83, a party who makes separate property contributions toward community obligations after separation is entitled to be reimbursed from community assets. The court here applied those principles and ruled appellant would be charged a fair rental value of \$5,200 per month for his use of the family home, but that he was entitled to a credit of \$6,108.25 per month for contributions he made to maintain the family home. The court stated appellant was entitled to an “*Epstein* credit” for the difference between these two amounts; \$908.25 per month.

Respondent’s motion asked the court to clarify the fact that while appellant might have been entitled an *Epstein* credit, the \$908.25 difference between the *Watts* charge and the *Epstein* credit was in fact a community obligation that was to be divided equally between the parties.<sup>8</sup>

On November 15, 2010, before the court could rule on respondent’s motion, appellant filed a notice of appeal from the September 30, 2010 judgment.

The trial court conducted a hearing on respondent’s motion on December 16, 2010, and on January 7, 2011, it granted respondent’s motion to correct the clerical error ruling that the “\$908.25 per month net *Epstein* credit, both past accumulated and ongoing as discussed in the judgment, is a credit to the community and not [appellant] individually. Each party is individually responsible for one half of this credit to equalize the difference between maintenance costs and fair market rental value as discussed in the judgment.”

Appellant now contends the trial court lacked jurisdiction to order any change to the judgment because that decision had been appealed.

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<sup>8</sup> This appears to be undisputed. As the court explained in *In re Marriage of Jeffries* (1991) 228 Cal.App.3d 548, “It is important to note that both ‘*Epstein* credits’ and ‘*Watts* charges’ are, respectively, to be paid from or paid to *the community*. Inasmuch as both spouses have an equal interest in community assets (§ 5105), and in light of a trial court’s obligation under the Family Law Act to divide community assets equally between the parties upon a dissolution of the marriage (§ 4800, subd. (a)), it follows that the *net* effect of allocating ‘*Epstein* credits’ and ‘*Watts* charges’ in a division of community assets should be (1) the equal sharing of ‘*Epstein* credits’ by both spouses and (2) the equal bearing of ‘*Watts* charges’ by both spouses.” (*Jeffries*, at p. 553.)

The general rule is that a notice of appeal divests the trial court of jurisdiction over a case (*Vosburg v. Vosburg* (1902) 137 Cal. 493, 496), but several exceptions to that rule exist. One is that even after an appeal, a trial court retains jurisdiction to correct clerical errors in its judgment. (*Jackson v. Dolan* (1922) 58 Cal.App. 372, 374.) That is precisely what occurred here. Respondent asked the court to clarify a portion of its judgment. The court agreed to do so explaining its decision as follows, “The last paragraph says, ‘If the [appellant] continues to reside in the Fremont residence, he shall be entitled to a net *Watts/Epstein* credit of \$908 per month from April 1st, 2010, through the close of escrow.’ [¶] So when – each month, when you pay \$908.25, there’s two ways to look at this: The community, which is yourself and your former wife, owes you \$908.25. Or if you want to break it down between individuals, [respondent] owes you half that amount. That’s clearly the law and that’s clearly what I believe is in the judgment and Statement of Decision already, which, to the extent it needs further clarification, that’s my clarification.”

We conclude the court did not err on this ground.

#### E. Sanctions

Appellant and respondent have each filed motions asking that sanctions be imposed against the other for filing a frivolous appeal. Respondent’s request is warranted.

Code of Civil Procedure section 907 states: “When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just.” (See also Cal. Rules of Court, 8.276(a)(1).) In *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, our Supreme Court set forth the standard that applies: “an appeal should be held to be frivolous only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit.” (*Id.*, at p. 650.)

Both those standards are met here. Turning to the latter first, as we have explained above, virtually every argument appellant makes indisputably lacks merit. (*Maple*

*Properties v. Harris* (1984) 158 Cal.App.3d 997, 1010.) Appellant presents his arguments in ways that violate well-settled rules of appellate review and procedure. He challenges procedures that he (or his counsel) agreed to in the court below. Appellant alleges as error rulings that he induced through his own conduct. He cites statutes that do not exist and misapplies statutes by ignoring their language and their plain meaning. In each of these instances, any reasonable attorney would agree that the issues appellant raises are indisputably without merit.

Turning to the former standard, a declaration respondent has submitted strongly indicates appellant is pursuing these appeals for purposes of delay. According to respondent, “my former husband . . . has repeatedly told me that unless I agree to sell him our former community home in Fremont—with offset for other assets he wants to force me to take—he will tie up my property interests ‘for years’ in appeals. At the time of the March 2010 trial, [appellant] was unemployed. He told me then that it did not matter that he was unemployed because he would delay the case with appeals until he found work which qualified him for a mortgage. Once he found work, he told me that the property value had declined since the trial by more than \$200,000, and that now I had to sell to him at the decreased price. He threatened that if I did not sell, the market would only decline further as the appeals drag on.”

As for the amount of sanctions, we consider the facts in relation to the policy underlying Code of Civil Procedure section 907. (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 526.) In addition, we have considered the fact that appellant has already been sanctioned first by Judge Grimmer and then by Judge Pulido without any noticeable effect. Finally, we note respondent avers in her declaration that she has spent more than \$250,000 in attorney fees and costs in the divorce proceedings, and her attorney declares that respondent has incurred attorney fees and costs of more than \$67,500 pursuing these appeals. Under these circumstances, we conclude appellant should be sanctioned \$60,000 for pursuing these frivolous appeals, the amount to be paid

jointly to respondent and her attorney.<sup>9</sup>

In addition, we will order that a copy of this opinion be forwarded to the California State Bar for investigation and possible discipline. (Bus. & Prof. Code, § 6086.7.) This opinion shall serve as the notification to appellant that the matter has been referred to the State Bar as is required by Business and Professions Code section 6086.7, subdivision (b). Finally and importantly, we ask the State Bar to consider whether appellant's apparently willful violations of this court's orders limiting the length of his briefs warrants investigation and possible discipline.

### III. DISPOSITION

The judgment and order at issue are affirmed. Appellant is sanctioned \$60,000 for filing frivolous appeals the amount to be paid jointly to respondent and her attorney. Pursuant to Business and Professions Code section 6086.7, the clerk of this court is ordered to forward a copy of this opinion to the California State Bar for investigation and possible discipline.

Costs to respondent.

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Jones, P.J.

We concur:

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Needham, J.

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Bruiniers, J.

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<sup>9</sup> At oral argument, respondent's counsel asked us to make these sanctions a charge against appellant's share of the proceeds from the sale of the family home. We find no authority that would allow us to do so. Instead, the trial court is empowered to take steps necessary to ensure these sanctions are paid, including but not limited to, ordering the amount to be deducted from appellant's share of the community assets.